Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Allocation of Costs Associated with Local Exchange Carrier Provision of Video Programming Services	)	CC Docket No. 96-112
	)	

Reply Comments of BroadBand Technologies, Inc.

BroadBand Technologies, Inc., respectfully submits these comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.[1] The initial comments in this proceeding bear out BroadBand Technologies' grave concern that the cost allocation rules proposed in the *Notice* would greatly reduce or even eliminate the incentives for local exchange carriers (LECs) to deploy advanced integrated broadband networks, thus depriving consumers of the benefits of such networks and undermining the United States' position as the global leader in telecommunications technology and network modernization. BroadBand Technologies urges the Commission to cut through the clutter of conflicting views in this proceeding and focus on the practical consequences of what it and other parties are proposing.

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[1] *Allocation of Costs Associated with Local Exchange Carrier Provision of Video Programming Services*, Notice of Proposed Rulemaking, CC Docket No. 96-112, FCC No. 96-214 (rel. May 10, 1996) ("*Notice*").

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I. The Commission's Rules Should Encourage The Deployment Of Integrated Networks

The proponents of fixed allocators or other rules that would require the allocation of an onerous share of the common costs of an integrated telephony/video network to the unregulated side ignore a basic fact that should be absolutely central to the Commission's deliberations in this proceeding. Local exchange carriers (LECs) that wish to enter the video programming distribution market in their service territories have a choice: they can do so by upgrading their existing narrowband telephone facilities in order to deliver telephony, video programming, and other new broadband services on an integrated basis, or they can build physically separate video delivery networks instead, while making no improvements to the existing public switched network. If the proposals in the *Notice*, or the even more draconian proposals submitted by cable TV interests, are adopted, no LEC will opt to build integrated systems.

From a consumer welfare and public policy perspective, there is no question that the integrated network option is preferable. Commenters agree broadly with the Commission that integrated networks produce economies of scope.[2] Accordingly, the Commission's rules should encourage the deployment of integrated networks instead of economically inefficient stand-alone telephony and video networks. But the comments make

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[2] *Notice* at ¶ 20. *See, e.g.*, Cox Communications, Inc. Comments at 3, National Cable Television Association ("NCTA") Comments at 23, and Pennsylvania Office of Consumer Advocate Comments at 6, Time Warner Cable Comments at 3, and United States Telephone Association ("USTA") Comments at 13

it abundantly clear that the Commission's proposed rules would have the exact opposite effect.

In the name of ensuring that telephone ratepayers receive "some of the benefit" of the economies of scope made possible by the use of integrated networks,[3] the Commission proposes to adopt rules under which a "significant part of common costs" would be allocated to unregulated services.[4] For rate-of-return regulated carriers, such rules would require significant reductions in regulated telephone service rates. The rules also would oblige LECs subject to price caps to reduce their regulated service rates significantly if, as urged by supporters of the Commission's proposals, the change in the allocation of common costs were treated as an "exogenous" cost change under the price cap rules.

In other words, a LEC that opted to enter the video distribution market by upgrading its existing telephone network to integrated broadband capability would be required to reduce its regulated telephone rates as a precondition for doing so. Moreover, the rate reductions involved could be very significant, since loop plant accounts for approximately half of total telecommunications plant in service. As noted above, advocates of such a requirement ignore that a LEC has another option. If a LEC opts instead to build a physically separate video distribution network, it would not be required to reduce its regulated service rates. In such an instance, a LEC would not be required to reallocate any part of the loop plant or switching costs of its telephone network to unregulated services, since none of these facilities would be used to deliver video programming.

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[3] *Notice* at para. 23.

[4] *Id.*

The comments in this proceeding reinforce BroadBand Technologies' conviction that few, if any, LECs will opt to build integrated networks if, in addition to incurring the costs and risks involved in such construction, they are also required to roll back their telephone service rates. The proposals in the *Notice*, and the even more onerous cost allocation rules advocated by cable TV interests, would drive LECs away from building integrated networks and toward stand-alone video distribution facilities, despite the economic inefficiencies that would result. As U S WEST states in its comments, "[i]f the Commission errs too far on the side of protecting the regulated ratepayers, there likely will be nothing to cross-subsidize."[5/] U S WEST adds that "the 50/50 fixed factor approach as set forth in the *Notice* would be easy to administer because, if adopted without clarification and refinement, there probably would be little incumbent LEC video activity for the Commission to monitor."[6/] BroadBand Technologies agrees, and stresses that the odds of LECs building integrated platforms would be even longer with a fixed factor approach that allocates an even larger share of common costs to unregulated services, as proposed by the cable TV industry.

BroadBand Technologies agrees with the U.S. Telephone Association that, with respect to integrated networks, the Commission's rules should focus on ensuring that telephone customers are <u>no worse off</u> than they would be if a LEC built a stand-alone telephone network.[7/] Such an approach would preserve the incentive structure for LECs to build integrated networks, thus ensuring the realization of the economic efficiencies such

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5/ U S WEST Comments at 3.

6/ U S WEST Comments at 8.

7/ USTA Comments at 5, n. 13.

networks produce. Consumers ultimately will benefit from these economies in the form of lower prices for both regulated and unregulated services, since LECs will face competition immediately in the video market and in the very near future in the telephone services market. But by seeking to manipulate by regulation the distribution of these economic efficiencies between regulated and unregulated service customers, the Commission risks destroying such efficiencies altogether.

II. Commission Regulation Should Not Artificially Constrain Competition

This is precisely the outcome desired by cable TV interests, the largest group of proponents of fixed allocators and cost ceilings. Anything that handicaps LECs, or deprives them of economic efficiencies as they prepare to enter the video programming market in competition with the cable TV industry, serves the latter's interests. As the National Cable Television Association (NCTA) and others acknowledge,[8/] the cable industry is preparing to enter the local exchange services market throughout the United States. It is extraordinarily disingenuous for these parties to urge the Commission to impose burdensome cost allocation rules on LECs, ostensibly in order to protect ratepayers from financing the LECs' entry into the video business, at the very same time that cable TV operators are pouring billions of dollars into network upgrades needed to deliver telephone service.[9/]

8/ NCTA Comments at 1. *See also* Continental Cablevision Comments.

9/ For instance, Continental Cablevision states that it is spending $1.35 billion over a multi-year period to deploy new hybrid fiber/coax systems capable of delivering telephone (continued...)

Nowhere do the cable TV operators propose to subject themselves to new cost allocation rules or other safeguards in order to protect captive cable TV customers from financing these upgrades. Nor do they propose regulations to ensure that their video customers receive some of the benefits from the future joint use of these networks for the integrated delivery of video and telephone services.

BroadBand Technologies believes that what is good for the goose is good for the gander. BroadBand Technologies does <u>not</u> believe that burdensome cost allocation rules should be imposed on cable TV operators. But by the same token, such rules should not be imposed on LECs. The fact that LECs currently are subject to certain cost allocation rules is not a rational basis to expand those rules greatly and apply them in a manner that will distort competition. BroadBand Technologies fully concurs with the Commission's recent statement that competitors should "have the option to make the same choices, unconstrained by artificial regulations based on their historical regulatory classification."[10/]

Both LECs and cable TV operators should be encouraged to compete with each other, and to deploy the most economically efficient integrated networks in anticipation of such competition. Currently, both industries have market power in their traditional markets, and are new entrants in each other's markets. The best way for the Commission to fulfill its statutory obligation to ensure that incumbent LECs do not "use services that are not

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[9/](...continued)
services. Affidavit of David M. Fellows at 6, included in Continental Cablevision Comments.

[10/] *Implementation of Section 302 of the Telecommunications Act of 1996 -- Open Video Systems*, Second Report and Order (rel. June 3, 1996) at para. 18.

competitive to subsidize services that are subject to competition"[11] is to foster direct competition between the two industries. Competition will eliminate each industry's remaining ability to cross-subsidize certain services out of revenues from services that are not subject to competition.

Finally, the comments bear out BroadBand Technologies's concern that the benefits of fixed allocators and other "one-size-fits-all" cost allocation rules, in terms of simplicity, are outweighed by such rules' failure to take account of significant differences in integrated network architectures and service configurations. Cable TV interests and other parties tout the administrative simplicity of fixed allocators. While LECs are (along with the Commission) the principal potential beneficiaries of such simplicity, most LECs oppose such an approach. As Pacific Telesis states, "[t]he biggest disadvantage in establishing a fixed factor is that LECs may make critical decisions about deployment of technology and new services that are contrary to those that would be made based on market forces. In effect, regulation -- not sound business judgment -- would dictate competitive decisions."[12]

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[11] *Telecommunication Act of 1996*, Pub. L. 104-104, 101 Stat. 56 (1996) § 101(a).

[12] Pacific Telesis Comments at 14.

III. Conclusion

For the reasons discussed above, BroadBand Technologies again urges the Commission to adopt a flexible approach cost allocation that encourages the economically efficient deployment of integrated broadband networks.

Respectfully submitted,

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